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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA, et al.,

Plaintiffs,

v.

MICHAEL REGAN, et al.,

Defendants,

STATE OF GEORGIA, et al.,

Intervenor-Defendants.

Case No. 3:20-cv-03005-RS

**PLAINTIFFS' RESPONSE TO
DEFENDANTS' MOTION TO
CONTINUE STAY (ECF NO. 237)**

Action Filed: May 1, 2020

Pursuant to Civil Local Rules 6-3 and 7-3(b), Plaintiffs¹ submit this statement in response to the motion to continue the stay in this litigation filed by Defendants United States Environmental Protection Agency (EPA), EPA Administrator Michael Regan, the United States Army Corps of Engineers, and Acting Secretary of the Army for Civil Works Mr. Taylor N. Ferrell (collectively, the Agencies) on April 9, 2021. ECF No. 237. The motion seeks a 60-day extension of the stay ordered by this Court on February 17, 2021 (ECF No. 229) to allow the Agencies time to complete their review of the *Navigable Waters Protection Rule: Definition of “Waters of the United States,”* 85 Fed. Reg. 22,250 (Apr. 21, 2020) (2020 Rule) pursuant to President Biden’s Executive Order No. 13990, 86 Fed. Reg. 7037 (Jan. 25, 2021). As directed by the Executive Order, the Agencies must determine whether the 2020 Rule should be maintained, modified, or otherwise reconsidered. In addition to requesting an extension of the stay, the Agencies’ motion also requests a continuance of the existing litigation deadlines by 75 days.

Plaintiffs agree that a 60-day extension of the stay accompanied by 75-day extension of the litigation deadlines in this matter is appropriate. First, the new EPA Administrator was sworn in just a little over a month ago and has, as a result, only recently been briefed on the 2020 Rule. Second, the Agencies are in the process of reviewing the 2020 Rule along with numerous other rules issued by the previous federal administration. Given that the current administration is now evaluating its options regarding the 2020 Rule and is working toward making a decision about the Rule soon, a limited extension of the stay is also warranted in order to help minimize any unnecessary expenditure of resources by the parties or the Court.

To ensure that the Agencies complete their review of the 2020 Rule in a timely manner and to allow the parties and the Court to adequately prepare to resume litigation, if necessary, Plaintiffs respectfully request that the Court grant the motion and also require in its order that the Agencies: 1) meet and confer with Plaintiffs regarding the status of the Agencies’ review of the 2020 Rule at least 21 days before the date on which the stay of the litigation is set to expire; and

¹ Plaintiffs are the States of California, New York, Connecticut, Illinois, Maine, Maryland, Michigan, New Jersey, New Mexico, North Carolina, Oregon, Rhode Island, Vermont, Washington, Wisconsin, the Commonwealths of Massachusetts and Virginia, the North Carolina Department of Environmental Quality, the District of Columbia, and the City of New York.

2) file a status report at least seven (7) days before the date on which the stay of the litigation is set to expire to inform the Court about the status of the Agencies' review of the 2020 Rule.

Dated: April 13, 2021

Respectfully Submitted,

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SIGNATURE ATTESTATION

Pursuant to Civil Local Rule 5-1(i)(3), I attest that concurrence in the filing of this document has been obtained from each of the other signatories.

Dated: April 13, 2021

/s/ Tatiana K. Gaur
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CERTIFICATE OF SERVICE

Case Name: **State of California, et al. v. Andrew R. Wheeler, et al.**

Case No.: **3:20-cv-03005-RS**

I hereby certify that on April 13, 2021, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION TO CONTINUE STAY
(ECF NO. 237)**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 13, 2021, at Los Angeles, California.

Beatriz Davalos
Declarant

/s/ Beatriz Davalos
Signature